

Status **Active** PolicyStat ID **16805907**



Origination	09/2024	Owner	Samantha Hart
Last Approved	05/2025	Area	Human Resources
Effective	05/2025	Applicability	Bucknell University
Last Revised	05/2025		
Next Review	05/2027		

EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

Purpose:

Bucknell University is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity. Bucknell values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved. Bucknell University prohibits discrimination and harassment because of race, color, national origin, religion, sex, sexual orientation, gender identity, gender expression, age, disability, genetic information, veteran status, or any other characteristic protected under applicable federal or state law in its application and admission processes; educational programs and activities; employment policies, procedures, and processes; and university facilities. The University takes active measures to prevent such conduct and investigates and takes remedial action when appropriate.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Bucknell has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment or allegations of retaliation.

Scope:

This Policy applies to all faculty, staff, students, and other individuals participating in or attempting to participate in the University’s program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s) listed in

the University's Notice of Nondiscrimination. The Equal Opportunity, Harassment, and Nondiscrimination Procedures may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

This Policy is applicable to alleged incidents that occurred after May 14, 2020.

Definitions:

"Advisor" means any person chosen by a Complainant or Respondent, or appointed by the institution, who may accompany the Complainant or Respondent to all meetings related to the Resolution Process and advise the Complainant or Respondent on that process.

"Appeal Decision-maker" means the person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.

"Bias Incident" means completed, attempted or threatened abusive or hostile acts against persons, property or an institution, where such acts manifest evidence that the target was intentionally selected on the basis of the target's actual or perceived age, class, color, disability, ethnic/regional/national origin group, gender, gender identity, gender expression, race, religion, sex or sexual orientation.

"Clery Act" means the Jeanne Clery Campus Safety Act (20 U.S.C. § 1092(f))

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.

"Complaint" means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.

"Confidential Employee" means:

- A. An Employee whose communications are privileged or confidential under federal or state law. The Employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
- B. An Employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, retaliation, or Other Prohibited Conduct; or
- C. An Employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, retaliation, or Other Prohibited Conduct. The Employee's confidential status only applies with respect to information received while conducting the study.

"Dating Violence" means violence committed by a person:

- A. Who is or has been in a social relationship of a romantic or intimate nature with the

Complainant; and

- B. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
1. The length of the relationship;
 2. The type of relationship; and
 3. The frequency of interaction between the persons involved in the relationship

For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

"**Day**" means all references in the Policy to days refer to business days unless specifically noted as calendar days.

"**Decision-maker**" means the person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.

"**Directly-related Evidence**" means evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot not be relied upon by the investigation report or Decision-maker.

"**Discriminatory Harassment**" means unwelcome conduct on the basis of actual or perceived Protected Characteristic(s), that based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the University's Education Program or Activity.

"**Domestic Violence**" means felony or misdemeanor crimes committed by a person who:

- A. Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Pennsylvania, or a person similarly situated to a spouse of the Complainant;
- B. Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
- C. Shares a child in common with the Complainant; or
- D. Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.

"**Education Program or Activity**" means locations, events, or circumstances where the University exercises substantial control over the context in which the discrimination, harassment, retaliation, and/or Other Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that the University officially recognizes.

"**Employee**" means a person employed by the University either full- or part-time, including student employees when acting within the scope of their employment. Employee also includes Faculty.

"Final Determination" means a conclusion by the standard of proof that the alleged conduct did or did not violate Policy.

"Finding" means a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").

"Hate Crime" means criminal homicide, Sexual Assault, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny-theft, simple assault, intimidation, or destruction/damage/vandalism of property, where such crime manifests evidence that the target was intentionally selected because of the perpetrator's bias related to the target's actual or perceived race, gender, religion, sexual orientation, ethnicity, national origin, gender identity and/or disability. The Bucknell University Public Safety Department determines whether a campus incident rises to the level of a hate crime.

"Hostile Environment" means an environment that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

"Informal Resolution" means a resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.

"Investigation Report" means the Investigator's summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.

"Investigator" means the person(s) authorized by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.

"Mandated Reporter" means a University employee who is obligated by Policy to share Notice, and/or reports of discrimination, harassment, retaliation, and/or Other Prohibited Conduct with the Title IX Coordinator.

"Notice" means when an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of discriminatory, harassing, retaliatory, and/or Other Prohibited Conduct.

"Parties" means the Complainant(s) and Respondent(s), collectively.

"Pregnancy or Related Conditions" means pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

"Protected Characteristic" means any characteristic for which a person is afforded protection against discrimination and harassment by law or University Policy.

"Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant.

"Relevant Evidence" means evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.

"Remedies" means, typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University's Education Program or Activity.

"Resolution Process" means the investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, Administrative Resolution, and Hearing Resolution.

"Respondent" means a person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.

"Sanction" means a consequence imposed on a Respondent who is found to have violated this Policy.

"Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

- A. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct ("Quid Pro Quo");
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
- C. Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in this Policy.

"Sexual Assault" means any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. This includes:

- A. Non-Consensual Sexual Intercourse: Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal.
 1. For ease of understanding, this Policy uses the term "non-consensual sexual intercourse" to encompass all conduct defined by 20 U.S.C. 1092(f)(6)(A)(v).
- B. Fondling: The touching of the private body parts (i.e. buttocks, genitalia, breasts) of another person for the purpose of sexual gratification without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 1. This includes having another person touch you sexually, forcibly, and/or without their consent for purposes of sexual gratification.
- C. Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- D. Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

"Sexual Exploitation" means taking non-consensual or abusive sexual advantage of another for one's

own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:

- A. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed);
- B. Indecent exposure or inducing others to expose themselves when consent is not present;
- C. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent);
- D. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing);
- E. Prostituting another individual;
- F. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- G. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to:

- A. Fear for the person's safety or the safety of others; or
- B. Suffer Substantial Emotional Distress.

For the purposes of this definition "course of conduct" means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.

"Student" means, for the purpose of this Policy, any person who has gained admission to Bucknell.

"Substantial Emotional Distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

"Substantial University Interest" includes:

- A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.

- B. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- C. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- D. Any situation that substantially interferes with the University's educational interests or mission.

"Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. Supportive Measures are offered, without fee or charge to the Parties, to restore or preserve access to the University's Education Program or Activity, including measures designed to protect the safety of all Parties and/or the University's educational environment and/or to deter discrimination, harassment, and/or retaliation. Supportive Measures may include, but are not limited to:

- A. Referral to confidential resources
- B. Referral to counseling, medical and/or other healthcare services
- C. Referral to the Employee Assistance Program
- D. Implementing contact limitations through mutual No Contact Orders
- E. Visa and immigration assistance
- F. Student financial aid counseling
- G. Education to the institutional community
- H. Altering campus housing assignment(s)
 - I. Altering work arrangements
- J. Safety planning
- K. Providing campus safety escorts
- L. Academic flexibility requests
- M. Tress, Persona Non Grata (PNG)
- N. Timely warnings
- O. Class schedule modifications, withdrawals, or leaves of absence
- P. Increased security and monitoring of certain areas of the campus
- Q. Any other actions deemed appropriate by the Title IX Coordinator or designee

"Title IX Coordinator" means the official designated by the University to ensure ultimate oversight of compliance with Title IX and the University's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the Coordinator for specific tasks, such as the Deputy Title

IX Coordinators.

Policy:

Notice of Nondiscrimination

- A. Bucknell University does not discriminate on the basis of race, color, national origin, sex, disability, religion, age, veteran status, gender identity, marital status, sexual orientation, gender expression or any characteristic protected by law, in its educational programs and activities, admissions, or employment, as required by Title IX of the Educational Amendments of 1972, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, and other applicable laws and University policies.
- B. This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy.
- C. Bucknell will promptly and effectively address any such discrimination of which it has Notice using the resolution process in the Equal Opportunity, Harassment, and Nondiscrimination Procedures attached as "APPENDIX A" to this Policy.

Mandatory and Confidential Employees

A. Mandatory Employees

1. All University employees other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials, using the information in Reporting Violations of this Policy attached as "APPENDIX C" to this Policy, as soon as possible, typically within 24 hours.
2. Student employees who, within the scope of their employment responsibilities, learn about conduct that reasonably may constitute sex discrimination under Title IX, should provide the contact information of the Title IX Coordinator and information about how to make a Complaint to the University.
3. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.
4. The Title IX Coordinator or designee will assist in navigating through the appropriate

Bucknell University grievance procedure and explain all resources available to the Complainant.

5. A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

B. Confidential Employees

1. To enable Complainants to access support and resources without filing a Complaint, the University has designated specific Employees as Confidential Resources. Information on Confidential Resources is attached as "APPENDIX B" to this Policy.
2. Those designated as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform a University official unless a Complainant has requested the information be shared.
3. Confidential Employees will maintain confidentiality when acting under the scope of their designation, licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.
4. Non-identifying information may be shared by Confidential Employees for the purpose of statistical information collected pursuant to the Clery Act.

Jurisdiction

- A. This Policy applies to the University's Education Program or Activity, circumstances where the University has disciplinary authority, and to misconduct occurring within any building owned or controlled by a University-recognized student organization.
- B. This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to University's Education Program or Activity. The University may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a Substantial University Interest.
- C. For disciplinary action to be issued under this Policy, the Respondent must be a University Employee or Student at the time of the alleged incident. If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator or designee will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University may also assist in contacting local or institutional law enforcement if the Complainant would like to file a police report about criminal conduct.
- D. All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and to this Policy.

Supportive Measures

- A. The University will offer and implement appropriate and reasonable Supportive Measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation.
- B. The Title IX Coordinator or designee promptly makes Supportive Measures available to the Parties upon receiving Notice or a Complaint. At the time that Supportive Measures are offered, if a Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Complaint with the University either at that time or in the future.
- C. The Title IX Coordinator or designee will work with the Parties to ensure that their wishes are considered with respect to any planned and implemented Supportive Measures.
- D. The University will maintain the confidentiality of the Supportive Measures, provided that confidentiality does not impair the University's ability to provide those Supportive Measures. The University will act to ensure as minimal an academic/occupational impact on the Parties as possible and will implement Supportive Measures in a way that does not unreasonably burden the Parties.
- E. Violations of No Contact Orders or other restrictions may be referred to the appropriate Student or Employee conduct processes for enforcement.

Disability-based Grievances and Complaints

- A. Grievances related to disability status and/or provision of accommodations are addressed using the procedures administered by the [Office of Accessibility Resources](#) for Students and through the Division of Talent, Culture and Human Resources for faculty, staff, and visitors. Allegations of discrimination on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under the procedures attached as "APPENDIX A" to this Policy.

Online Harassment and Misconduct

- A. This Policy includes online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's Education Program or Activity, or when they involve the use of University networks, technology, or equipment.
- B. Although Bucknell may not control the websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, the University will engage in a variety of means to address and mitigate the effects of said communications. These means may include use of a resolution process to address off-campus conduct whose effects contribute to limiting or denying a person access to the University's Education Program or Activity.

Prohibited Conduct

- A. Students, faculty and staff are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.
- B. The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under this Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University Policy, though supportive measures will be offered to those impacted.
- C. All offense definitions below encompass actual and/or attempted offenses.
- D. Any of the following offenses can be charged individually or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated.
 - 1. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.
- E. Violation of any other University policies may constitute discrimination or harassment when motivated by actual or perceived Protected Characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

Discrimination

- A. Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, gender identity, religion, or creed.
- B. Discrimination can take two primary forms:
 - 1. **Disparate Treatment Discrimination:** any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic and that:
 - a. Excludes an individual from participation in;
 - b. Denies the individual benefits of; or
 - c. Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.
 - 2. **Disparate Impact Discrimination:** disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:

- a. Excludes an individual from participation in;
- b. Denies the individual benefits of; or
- c. Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

Discriminatory Harassment

- A. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a Hostile Environment.
 1. When Discriminatory Harassment rises to the level of creating a Hostile Environment, the University may impose sanctions on the Respondent through application of a Resolution Process.
 2. The University reserves the right to address offensive conduct and/or harassment that (a) does not rise to the level of creating a Hostile Environment, or (b) that is of a generic nature and not based on a Protected Characteristic. Addressing such conduct will not result in the imposition of discipline under this Policy, but may be addressed through other University policies, respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.
- B. All reports of a Bias Incident, will be evaluated under this Policy to determine whether they constitute one of the offenses listed below. Bias-related conduct includes a broad range of conduct that can be verbal, non-verbal, written, or physical conduct that harms, discriminates or harasses anyone in our community based on a protected class. Any conduct that is bias-related but does not otherwise rise to the level of discrimination or harassment under this Policy may be addressed through remedial actions, education, and/or conflict resolution mechanisms.

Title IX Offenses

These offenses are fully defined in the "Definition" section above.

- A. Sexual Harassment
- B. Sexual Assault
- C. Dating Violence
- D. Domestic Violence
- E. Stalking

Sexual Misconduct Offenses

These offenses capture a broader range of conduct that is beyond the scope of Title IX:

- A. **Hostile Environment Sexual Harassment** - unwelcome conduct on the basis of sex that meets the

Hostile Environment definition.

B. Sexual Exploitation

C. **Consent, Force, and Incapacitation** - As used in coordination with the offenses above, the following definitions and understandings apply:

1. **Consent:** Knowing, voluntary and mutual decision among all participants to engage in sexual activity.
 - a. Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate Consent. To give Consent, a person must be of legal age.
 - b. Assent does not constitute Consent if obtained through Coercion or from an individual whom the person initiating the sexual contact knows or reasonably should know is incapacitated. Coercion is the use of express or implied threats, intimidation or physical force which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity.
 - i. Coercion constitutes unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's Consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive (i.e. badgering, blackmailing, guilting, lying, etc.). Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.
 - ii. Coercion includes administering a drug, intoxicant or similar substance with the intent to impair that person's ability to Consent prior to engaging in sexual activity.
 - c. Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If Consent is withdrawn, sexual activity should cease within a reasonably immediate time.
 - d. An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain Consent.
 - e. A current or previous consensual dating or sexual relationship between the Parties does not itself imply Consent or preclude a finding of responsibility for misconduct.

2. **Incapacitation:** Incapacitation is a state where a person is incapable of giving Consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed Consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot Consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.
 - a. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.
 - b. Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, and/or being drunk.
 - c. If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy.
 - i. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
3. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.
 - a. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Other Prohibited Conduct:

- A. **Bullying:** repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.
- B. **Threats/Physical Harm:** threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.
- C. **Intimidation:** implied threats or acts that cause an unreasonable fear of harm in another.
- D. **Hazing:** behavior consistent with [Bucknell University’s Anti Hazing Policy](#) as defined by Pennsylvania’s Timothy J. Piazza Antihazing Law (Act 80 of 2018).
- E. **Retaliation:** materially adverse acts or attempted acts for the purpose of interfering with any report,

investigation or proceeding under the Equal Opportunity, Harassment, and Nondiscrimination Policy, or as retribution or revenge against anyone who has reported prohibited conduct or who has participated (or is expected to participate) in any manner in an investigation or proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion or discrimination. Both federal and state law, as well as Bucknell University policy, prohibits Retaliation.

- F. **Unauthorized Disclosure:** Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the University; or publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

Standard of Proof

Bucknell uses the preponderance of the evidence standard of proof when determining whether a violation this Policy occurred. This means that the University will decide whether it is more likely than not based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

Reports and Complaints of Discrimination, Harassment, and/or Retaliation

- A. A Report provides notice to the University of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and Supportive Measures.
- B. A Complaint provides notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a Report and may decide at a later time to make a Complaint.
- C. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
1. File a Complaint with the Title IX Coordinator or designee.
 - a. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator using the information in "APPENDIX C" to this Policy.
 2. Submit online Notice via the appropriate reporting form [here](#).
 - a. Anonymous reporting is available through this mechanism, but anonymous Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

- D. Reporting carries no obligation to initiate a Complaint, and in most situations, Bucknell is able to respect a Complainant's request to not initiate a resolution process. There may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the University to discuss and/or provide Supportive Measures, in most circumstances.

Time Limits on Reporting

- A. There is no time limitation on providing Notice/Complaints to the Title IX Coordinator or designee. If the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.
- B. Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator's discretion. The Title IX Coordinator may document allegations for future reference, offer Supportive Measures and/or remedies, and/or engage in informal or formal action, as appropriate.

False Allegations and Evidence

- A. Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.
- B. Witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate University policies.

Confidentiality/Privacy

Bucknell makes every effort to preserve the Parties' privacy. The University will not share the identity of: any individual who has made a Complaint of discrimination, harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.

Unauthorized Disclosure of Information

- A. Parties and Advisors are prohibited from disclosing information obtained by the University through the Resolution Process, to the extent that information is the work product of Bucknell (meaning it

has been produced, compiled, or written by the University for purposes of its investigation and resolution of a Complaint), without prior written authorization. It is also a violation of Bucknell Policy to publicly disclose institutional work product that contains the Parties or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

- B. This provision does not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or Advisors; or to otherwise prepare for or participate in the Resolution Process.

Emergency Removal/Interim Action/Leaves

- A. The University can act to remove a Respondent entirely or partially from its Education Program or Activity on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any Student, Employee, or other individual justifies removal. This risk analysis is facilitated by the Title IX Coordinator in conjunction with the appropriate assessment team in coordination with the Office of Student Conduct (Students) or with a combination of representative(s) from Human Resources, the Provost Office, Public Safety Department and/or the appropriate supervisors/department chairs (Employees).
- B. In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to participate in a meeting with the Title IX Coordinator and/or designee prior to such action/removal being imposed, or immediately following the removal, to show cause why the action/removal should not be implemented or should be modified.
1. This Show Cause Meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.
 2. When this meeting is not requested within three (3) business days after notice is given, objections to the emergency removal will be deemed waived.
- C. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator(s), in consultation with other appropriate University administrators as necessary, these actions could include, but are not limited to:
1. removing a student from a residence hall,
 2. temporarily re-assigning an employee,
 3. restricting a student's or employee's access to or use of facilities or equipment,
 4. allowing a student to withdraw or take grades of incomplete,
 5. authorizing an administrative leave, and/or
 6. suspending a student's participation in extracurricular activities, student employment,

student organizational leadership, or intercollegiate/intramural athletics.

- D. At the discretion of the Title IX Coordinator or designee, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.
- E. Notwithstanding an emergency removal, when the Respondent is an Employee, the University also has the discretion to place the Employee Respondent on administrative leave during the pendency of a Resolution Process. Whether an emergency removal or an administrative leave is issued, the decision will be communicated fully to the Employee and in alignment with appropriate University employee policies.
- F. Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination. There is no appeal process for emergency removal decisions.

Federal Timely Warning Obligations

- A. Bucknell must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community.
- B. Bucknell will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. Information about timely warnings can be found through the University's Department of Public Safety [here](#).

Amnesty

- A. To encourage reporting and participation in this Policy and Resolution Process, Bucknell offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the Title IX Coordinator, in coordination with other appropriate University officials, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.
- B. The University also maintains this amnesty policy for Students in addition to witnesses who offer help to others in need.
- C. Sometimes, Employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The Title IX Coordinator, in coordination with other appropriate University officials, may, at in their discretion, offer Employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

Preservation of Evidence

- A. The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. The University will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

1. Evangelical Community Hospital has a trained sexual assault nurse examiner (SANE nurse) on call at all times to provide sensitive care and forensic exams to victims of Sexual Assault, and to collect and preserve evidence. The hospital recommends specific measures to preserve evidence including not showering or changing clothes before a forensic exam; however, an exam can be performed without taking such measures. Forensic exams can be performed up to 96 hours after a Sexual Assault. The Associate Director, Interpersonal Violence Prevention & Advocacy is available to arrange transportation to the hospital and to accompany a Complainant.
2. Evidence related to dating violence, domestic violence and stalking will also be preserved. The manner in which evidence is preserved will vary based on whether it was reported to the Department of Public Safety, which has [policies](#) on evidence collection.

Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report information, including prohibited conduct that falls under this Policy, for federal statistical reporting purposes pursuant to the Clery Act. Information related to Bucknell's Clery reporting procedures can be found via the office of Public Safety [here](#).

Independence and Conflicts of Interest

- A. The Title IX Coordinator manages the Policy and Resolution Process and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator and designees oversee all resolutions under this Policy and these procedures. The members of the Title IX team and other administrators assisting in the Resolution Process are vetted and trained to ensure they are not biased for or against the Parties in a specific Complaint, or for or against Complainants and/or Respondents, generally.
- B. To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Vice President for Talent, Culture & Human Resources. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other administrator implementing the Resolution Process should be raised with the Title IX Coordinator.

Revision of this Policy

- A. This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation. The Title IX Coordinator reviews and updates these policies and procedures regularly. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.
- B. If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.
- C. This document does not create legally enforceable protections beyond the protections of the

background state and federal laws that frame such policies and codes, generally.

BASED ON THE ATIXA 2020 ONE POLICY, TWO PROCEDURES (1P2P) MODEL. ©2020 ATIXA. USED WITH PERMISSION.

Related Documents:

[Bucknell University Student Code of Conduct !\[\]\(5f2ad55541d1c76614ad618336f6fa7b_img.jpg\)](#)

Attachments

-  APPENDIX A: Procedures
-  APPENDIX B: Confidential Resources
-  APPENDIX C: Reporting Violations of this Policy

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